

THE HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JUMAPILI IKUSEGHAN, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

MULTICARE HEALTH SYSTEM, a  
Washington nonprofit corporation

Defendant.

NO. 3:14-cv-05539-BHS

**FINAL JUDGMENT APPROVING  
CLASS ACTION SETTLEMENT**

This matter came before this Court on July 25, 2016, for final approval of the settlement embodied in the Class Action Settlement Agreement (the “Settlement Agreement”) between Plaintiff Jumapili Ikuseghan (“Plaintiff”) and Defendant MultiCare Health System (“Defendant”) (collectively, the “Parties”).

The proposed Settlement provides for a Settlement Fund of \$2.5 million from which Class Members are entitled to at least *pro rata* distributions of up to \$2,500 for the first five pre-recorded robocalls received from Hunter Donaldson, LLC made on behalf of Defendant, with potential for additional distributions thereafter for every call after the fifth call.

At the conclusion of the preliminary approval hearing, this Court entered an Order Granting the Stipulated Motion for Preliminary Approval of the Proposed Class Action Settlement, which also approved the proposed notice plan and forms of notice for the proposed

1 Settlement and scheduled the Final Approval Hearing for July 25, 2016 (the “Preliminary  
2 Approval Order”).

3 On March 18, 2016, in conjunction with Plaintiff’s Motion for Final Approval of Class  
4 Action Settlement, the Court-appointed Settlement Administrator and notice-provider, A.B.  
5 Data, Ltd. (“A.B. Data”), filed a declaration confirming the timely distribution to the  
6 Settlement Class of the Settlement Notices and Claim Forms by mail and internet as required  
7 by the Preliminary Approval Order and Settlement Agreement.

8 On July 15, 2016, in conjunction with Plaintiff’s Motion for Final Approval of Class  
9 Action Settlement, A.B. Data filed a supplemental declaration reporting that, following the  
10 distribution of the Court-ordered notices, it has received robust responses and approved 487  
11 Claim Forms from 24 states, with the current estimated payment per Class Member calculated  
12 to be \$2,500, and confirming it will continue to receive and process Claim Forms and  
13 submitted updated Claim reports to Class Counsel and counsel for the Defendants through the  
14 August 24, 2016 Claims Deadline.

15 On July 25, 2016, this Court held a fully-noticed and formal fairness hearing to consider  
16 whether to grant final approval to the Settlement, and to consider Class Counsel’s application  
17 for an award of attorneys’ fees and costs. The Court conducted a hearing, during which the  
18 Court heard argument from the parties and all others who appeared, whether represented by  
19 counsel or not.

20 Having read, reviewed and considered the papers filed with this Court, the oral  
21 arguments of counsel, and the written and oral objections and comments of all those who have  
22 appeared in these proceedings, and based on its familiarity with this matter, this Court finds and  
23 concludes as follows:

24 **I. THE CLASS NOTICE COMPLIED WITH THIS COURT’S ORDERS AND**  
25 **APPLICABLE LEGAL STANDARDS**

26 On February 17, 2016 this Court ordered that Class Notice be disseminated in  
27 substantially the form submitted by Plaintiff at the preliminary approval hearing, and further

1 specified the manner in which such dissemination should occur. Based upon the  
2 uncontroverted proof that A.B. Data submitted to the Court on March 18, 2016, this Court finds  
3 that the settling parties have complied with the Court's Orders, as follows:

4 The Court-approved Notice was mailed directly to 3,041 Class Members, whose  
5 identities and addresses were ascertained through expert research and analysis by A.B. Data.

6 Further, A.B. Data, the Court-approved Settlement Administrator, established a Court-  
7 approved website, [www.multicarerobocallsettlement.com](http://www.multicarerobocallsettlement.com), where Class Members can download  
8 and/or submit a Claim Form and obtain information regarding the Settlement.

9 The Settlement Administrator has established a toll-free helpline for Class Members  
10 who wished to learn more about the Settlement or request written Notice or Claim Forms.

11 Defendant provided notice of the Settlement Agreement to the U.S. Attorney General  
12 and the Attorney Generals of all forty-nine states in which Class Members reside, as required  
13 by 28 U.S.C. § 1715.

14 This Court finds that the Notice Program as a whole (1) constituted the best practicable  
15 notice under the circumstances, (2) constituted notice that was reasonably calculated, under the  
16 circumstances, to apprise Class Members of the pendency of the Action and their rights to  
17 object to or exclude themselves from this Settlement Agreement and to appear at the Final  
18 Approval Hearing, and (3) was reasonable and constituted due, adequate and sufficient notice  
19 to all persons entitled to receive notice.

20 The Notice clearly described the boundaries of the Class definition, the basis for the  
21 lawsuit, the terms and provisions of the Settlement, the remedies available to Class Members,  
22 the proposed method for benefit distribution, details of the proposed Class Representative  
23 incentive award, the requested percentage of the Settlement Fund Class Counsel seeks, and the  
24 costs award Class Counsel requests.

25 The Notice described the proposed Settlement with enough specificity to allow each  
26 Class Member to make an informed choice whether to (a) accept and participate in it; (b) opt  
27

1 out of it to preserve the right to bring a separate action; or (c) object to it. The Notice explains  
 2 the procedure by which a Class Member can take any such action. Finally, the Notice provides  
 3 the schedule for the Final Approval Hearing, and informs Class Members how to obtain  
 4 additional information from Class Counsel or the Settlement Administrator about the  
 5 Settlement.

6 Accordingly, the Court finds and concludes that the method and content of the Notice  
 7 met all applicable requirements of the Federal Rules of Civil Procedure, the Due Process  
 8 Clause of the United States Constitution and the rules of the Court, thereby satisfying all  
 9 applicable legal requirements.

## 10 **II. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE**

11 When considering a motion for final approval of a class action settlement under Rule  
 12 23, Fed. R. Civ. P., the Court's inquiry is whether the settlement is "fair, adequate, and  
 13 reasonable." *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *Linney v.*  
 14 *Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998). A settlement is fair, adequate,  
 15 and reasonable when "the interests of the class as a whole are better served if the litigation is  
 16 resolved by the settlement rather than pursued." Herbert B. Newberg & Alba Conte, *Newberg*  
 17 *on Class Actions* (5th) § 11.157, citing *Manual for Complex Litigation* (4th) § 21.62. The  
 18 decision to approve or reject a proposed settlement is committed to the Court's sound  
 19 discretion. *City of Seattle*, 955 F.2d at 1291.

20 In affirming the settlement approved by the trial court in *City of Seattle*, the Ninth  
 21 Circuit noted that it "need not reach any ultimate conclusions on the contested issues of fact  
 22 and law which underlie the merits of the dispute, for it is the very uncertainty of outcome in  
 23 litigation and avoidance of wasteful and expensive litigation that induce consensual  
 24 settlements." *City of Seattle* at 1291 (citation omitted). The district court's ultimate  
 25 determination "will involve a balancing of several factors," which may include:

26 the strength of plaintiffs' case; the risk, expense, complexity and  
 27 likely duration of further litigation; the risk of maintaining class

1 action status throughout the trial; the amount offered in settlement;  
 2 the extent of discovery completed, and the stage of the  
 proceedings; the experience and views of counsel . . . and the  
 reaction of the class members to the proposed settlement.

3 *Id.* (quoting *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982)).

4 This Court begins its analysis with a presumption that a class settlement is fair and  
 5 should be approved if it is the product of arm’s-length negotiations conducted by capable  
 6 counsel with extensive experience in complex class action litigation. *See M. Berenson Co., Inc.*  
 7 *v. Faneuil Hall Marketplace, Inc.*, 671 F. Supp. 819, 822 (D. Mass. 1987) (citing *Manual for*  
 8 *Complex Litigation* (2d) § 30.41; *In re Consolidated Pinnacle West Securities*, 51 F.3d 194,  
 9 197 n. 6 (9th Cir. 1995). Each of these factors is present here: Class Counsel has extensive  
 10 experience in class action litigation, and Class Counsel reached the Settlement with Defendant  
 11 only after vigorous litigation, extensive arm’s-length mediation facilitated by the Honorable  
 12 Bruce Hilyer (Ret.), and additional subsequent direct negotiation about the specific terms of the  
 13 Settlement. (*See* Declaration of Kim D. Stephens submitted in support of Plaintiff’s and Class  
 14 Counsel’s Motion for an Award of Attorneys’ Fees and Expenses and an Incentive Award to  
 15 the Class Representative (“Stephens Decl.”)).

16 Further, the Court has considered the factors set forth in *City of Seattle* to determine  
 17 whether the proposed Settlement warrants final approval. The Court finds, based on the record  
 18 submitted, that the Settlement is fair, adequate, and reasonable in light of, *inter alia*, the  
 19 following factors:

20 1. Whether the Settlement is the product of serious, informed and arm’s-length  
 21 negotiations

22 Arm’s-length negotiations conducted by competent counsel constitute *prima facie*  
 23 evidence of fair settlements. *See M. Berenson Co., Inc.*, 671 F. Supp. at 822. Mediation of this  
 24 case began after the parties exchanged discovery and pursued third-party discovery, after this  
 25 Court granted an Order Certifying the Class, and after the parties briefed Defendant’s motion  
 26 for summary judgment on the potentially dispositive issue of consent. Had Defendant  
 27 prevailed on its summary judgment motion and the consent issue been decided against the

Class, the Class would likely get nothing (absent a successful appeal). Had the Class defeated the summary judgment motion, Defendant potentially faced substantial exposure to damages (absent a successful appeal), although it had other defenses both on the extent of the damages and on liability (e.g., the requirement that plaintiffs prove agency). Because of the foregoing, the parties had sufficient information to evaluate the strength and weakness of the Class's case and Defendant's defenses. Against this backdrop, the parties agreed to mediate. (Stephens Decl., ¶ 9.) The parties conducted a mediation with Judge Bruce Hilyer (Ret.) on December 23, 2015, and again on January 12, 2016. Shortly thereafter, through additional direct negotiation, the parties reached the proposed settlement. (*Id.*, ¶ 10.) In negotiating this Settlement, Class Counsel had the benefit of years of experience combined with its familiarity with the facts of this case. (*See* Stephens Decl.) Based on the foregoing, the proposed Settlement is the result of intensive, arm's-length negotiations between experienced attorneys who are familiar with class action litigation in general and with the legal and factual issues of this case in particular.

## 2. Whether the Settlement provides substantial relief for Class Members

The Settlement provides substantial relief for Class Members. Under the proposed Settlement, all 3,041 Class Members from 49 states who received one or more robocalls from Hunter Donaldson are entitled from a Settlement Fund of \$2.5 million to payments of up to \$2,500 on a *pro rata* basis (Tier 1 distribution), and for Class Members who received more than five calls, additional compensation of up to \$500 per call for every call after the fifth call (Tier 2 distribution), except that Class Members eligible to receive a Tier 2 distribution who owe Defendant money for unpaid medical bills will have their debt to MultiCare extinguished in the amount of the Tier 2 payment, with Defendant being reimbursed from the fund in those amounts. Class Members may submit a simple claim to request the available relief. The recovery for Class Members is potentially as much or more than what the Class Members may have recovered in individually-litigated cases, and exceeds class member recoveries in recently

1 approved TCPA class action settlements. *See Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 493-  
 2 94 (N.D. Ill. 2015) (\$30 per claimant); *In re Capital One Tel. Consumer Prot. Act Litig.*, 80 F.  
 3 Supp. 3d 781, 789 (N.D. Ill. 2015) (\$35 per claimant); *Rose v. Bank of Am. Corp.*, No. 5:11-  
 4 CV-02390-EJD, 2014 WL 4273358, \*10 (N.D. Cal. Aug. 29, 2014) (\$20 to \$40 per claimant).

5 3. Whether the Settlement treats all Class Members fairly

6 The proposed Settlement provides monetary payments to all Class Members and treats  
 7 similarly-situated Class Members the same. Any difference in the amounts paid from the fund  
 8 will be a function of how many robocalls a Class Member received, or whether Defendant has a  
 9 valid, outstanding bill for hospital services rendered to a Class Member. Absent the  
 10 Settlement, the Class would have had to obtain a class judgment against Defendant, which was  
 11 not a guaranteed outcome, especially when considering Defendant's affirmative defenses.  
 12 Moreover, the outcome of trial and any appeals are inherently uncertain and involve significant  
 13 delay. The Settlement avoids these challenges and provides prompt, substantial relief for Class  
 14 Members, which weighs in favor of final approval of the Settlement.

15 4. The Views of Class Counsel

16 When assessing the fairness of a proposed settlement, the court must consider the views  
 17 and experience of counsel. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998).  
 18 Class Counsel in this case, who are experienced and skilled in class action litigation, support  
 19 the Settlement as fair, reasonable, and adequate, and in the best interests of the Class as a  
 20 whole. (*See* Stephens Decl.) Based on a review of Class Counsel's credentials and their bases  
 21 for supporting the Settlement, the Court finds this factor weighs in favor of Settlement  
 22 Approval.

23 5. The Expense and Likely Duration of Litigation in the Absence of Settlement

24 Another factor to consider in assessing the fairness of settlements is the complexity,  
 25 expense, and likely duration of the litigation without settlement. *City of Seattle*, 955 F.2d at  
 26 1291-92. As discussed, the Settlement guarantees a substantial recovery for the Class while  
 27

1 obviating the need for lengthy, uncertain, and expensive pretrial practice, trial and appeals.  
 2 Even if the Class were to prevail at trial, Defendant would likely appeal any adverse rulings  
 3 against it. Absent the proposed Settlement, Class Members would likely not obtain relief, if  
 4 any, for a period of years.

5 6. The Presence of Good Faith and the Absence of Collusion

6 This Court also considers the presence of good faith and the absence of collusion on the  
 7 part of the settling parties. *Newberg on Class Actions* § 13.45. This Court recognizes that  
 8 arm's-length negotiations conducted by competent counsel are prima facie evidence of fair  
 9 settlement. *See M. Berenson, Co., Inc.*, 671 F. Supp. at 822 (holding that where "a proposed  
 10 class settlement has been reached after meaningful discovery, after arm's-length negotiations  
 11 by capable counsel, it is presumptively fair.") The Settlement here is the result of intensive,  
 12 arm's-length negotiations between experienced counsel highly familiar with class action  
 13 litigation in general and with the legal and factual issues of this case in particular. The parties  
 14 conducted thorough discovery and this Court granted class certification before the parties fully  
 15 briefed Defendant's motion for summary judgment. This Court continued the hearing on the  
 16 summary judgment motion so the parties could conduct two mediation sessions with the Hon.  
 17 Bruce Hilyer. Subsequent direct negotiation finally resulted in the Settlement Agreement  
 18 before this Court. (Stephens Decl., ¶ 10.) There is no indication or allegation of collusion or  
 19 bad faith here.

20 7. Class Counsel Seeks Reasonable Fees

21 One final matter for the Court to consider in granting final approval to the Settlement is  
 22 the issue of attorneys' fees and costs. The Court has considered Plaintiff's and Class Counsel's  
 23 Motion for an Award of Attorneys' Fees and Expenses and an Incentive Award to the Class  
 24 Representative, submitted for consideration with the final approval of the proposed Settlement,  
 25 and by separate Order awards Class Counsel its attorneys' fees and costs and an incentive  
 26 award to the Class Representative. That Order shall be incorporated by reference in this  
 27



1 Judgment.

2 \* \* \* \* \*

3 Accordingly, the entire matter of the proposed Settlement having been duly noticed, and  
4 having been fully considered by the Court,

5 **IT IS HEREBY FOUND, ORDERED, ADJUDGED AND DECREED THAT:**

6 1. Unless otherwise provided herein, all capitalized terms in this Order shall have  
7 the same meaning as set forth in the Class Settlement Agreement previously filed with this  
8 Court (Dkt No. 63-1).

9 2. This Court finds that Notice to the Settlement Class has been completed in  
10 conformity with the Preliminary Approval Order. The Court finds the Notice (1) constituted  
11 the best practicable notice under the circumstances, (2) constituted notice that was reasonably  
12 calculated, under the circumstances, to apprise Class Members of the pendency of the Action  
13 and their rights to object to or exclude themselves from this Settlement Agreement and to  
14 appear at the Final Approval Hearing, (3) was reasonable and constituted due, adequate and  
15 sufficient notice to all persons entitled to receive notice, and (4) met all applicable requirements  
16 of the Federal Rules of Civil Procedure, the Due Process Clause of the United States  
17 Constitution and the rules of the Court, thereby satisfying all applicable legal requirements.

18 3. The Court finds it has personal jurisdiction over all Class Members and subject  
19 matter jurisdiction over all the claims asserted in the Complaint and to approve the proposed  
20 Settlement, including all exhibits attached to the Settlement Agreement.

21 4. The Court approves the proposed Settlement of this Class Action and the  
22 Settlement Agreement as fair, reasonable and adequate as to, and in the best interests of, the  
23 Class Members, in light of the degree of recovery obtained in relation to the risks faced by the  
24 Settlement Class in litigating the claims. The relief with respect to the Class Members is  
25 appropriate, as to the individual members of the Class and as a whole.

26 5. The Court directs the Parties and their counsel to implement and consummate  
27

1 the Settlement Agreement according to its terms and conditions.

2           6.       The Court authorizes the Parties, without further approval from the Court, to  
3 agree to and adopt such amendments, modifications and expansions of the Settlement  
4 Agreement and its implementing documents (including all Exhibits to the Agreement) that (1)  
5 are consistent in all material respects with the Final Judgment; and (2) do not limit the rights of  
6 Class Members.

7           7.       The Settlement is binding on, and has *res judicata* and preclusive effect in all  
8 pending and future lawsuits or other proceedings by or on behalf of Plaintiff and all other Class  
9 Members and Releasing Parties as defined in the Settlement Agreement. The Settlement Class  
10 is defined as the class certified by the Court's July 29, 2015 Class Certification Order and  
11 defined therein as "all persons who received medical treatment at a MultiCare facility, who  
12 signed MultiCare's Financial Agreement and Conditions of Treatment forms, and to whose  
13 cellular telephone number Hunter Donaldson made a call on behalf of MultiCare through the  
14 use of an automatic telephone dialing system or an artificial or prerecorded voice at any time on  
15 or after July 7, 2010." Excluded from the class are Defendant, the officers and directors of  
16 Defendant, at all relevant times, members of their immediate families and their legal  
17 representatives, heirs, successors or assigns and any entity in which Defendant has or had a  
18 controlling interest.

19           8.       There are no objections to the Settlement.

20           9.       No Class Members have opted out of the Settlement.

21           10.      All Class members who have not been properly excluded from the Class are  
22 permanently barred and enjoined from filing, commencing, prosecuting, intervening in, or  
23 participating (as class members or otherwise) in any lawsuit or other action in any jurisdiction  
24 based on the claims that are released by this Settlement or barred by the entry of the Final  
25 Judgment in this action.

26           11.      The obligations incurred pursuant to the Settlement Agreement fully and finally  
27

1 dispose of the Action and any and all Released Claims, as against all Released Parties, as  
2 defined by the Settlement Agreement. Upon the Effective Date, the Releasing Parties, and each  
3 of them, shall be deemed to have, and by operation of this Order of Final Judgment shall have,  
4 fully, finally, and forever released, relinquished and discharged all Released Claims against  
5 each and every one of the Released Parties.

6 12. The Court finds the Class Representative and Class Counsel adequately  
7 represented the Class for purposes of entering into and implementing the Settlement  
8 Agreement.

9 13. The Court has considered Plaintiff's and Class Counsel's Motion for an Award  
10 of Attorneys' Fees and Expenses and an Incentive Award to the Class Representative,  
11 submitted for consideration with the final approval of the Settlement, and by separate Order  
12 signed today awards Class Counsel its attorneys' fees and costs and an incentive award to the  
13 Class Representative.

14 14. The Clerk shall enter final judgment dismissing this action on the merits with  
15 prejudice and without costs or attorneys' fees to any party except as otherwise provided in this  
16 Court's Order Granting Plaintiff's and Class Counsel's Motion for Award of Attorneys' Fees  
17 and Expenses and Incentive Award to Class Representative. That Order, when entered, shall be  
18 incorporated by reference in this Judgment. The claims that are thereby dismissed shall include  
19 all claims encompassed by the release set out in the Settlement Agreement.

20 15. Without affecting the finality of this Order of Final Judgment for purposes of  
21 appeal, this Court retains jurisdiction as to all matters relating to administration, consummation,  
22 enforcement and interpretation of the Settlement Agreement and the Final Judgment, including  
23 the rights of Class Counsel to seek attorney fees, costs, and an incentive award to the named  
24 Plaintiff as provided in the Settlement Agreement, and for any other necessary purpose.  
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**IT IS SO ORDERED.**

DATED this 25th day of July, 2016.



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**BENJAMIN H. SETTLE**  
United States District Judge